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**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FRANCISCO ZELAYA-GAYTAN,

Petitioner,

V.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-74583

Agency No. A77-357-743

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted November 8, 2005^{**}

Before: WALLACE, LEAVY and BERZON, Circuit Judges.

Francisco Zelaya-Gaytan, a native and citizen of El Salvador, petitions for review of the Board of Immigration Appeals' ("BIA") order summarily affirming

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

an immigration judge's ("IJ") order denying his application for cancellation of removal. We dismiss the petition for review.

Zelaya-Gaytan's sole contention in his brief to this court is that his case should be remanded because he is eligible for adjustment of status. This contention is unavailing because the proper recourse is to file a motion to reopen. *See* 8 C.F.R. § 1003.2 (c)(1).

The voluntary departure period was stayed, and that stay will expire upon issuance of the mandate. *See Desta v. Ashcroft*, 365 F.3d 741, 750 (9th Cir. 2004).

Zelaya-Gaytan's motion to hold the case in abeyance is denied.

PETITION FOR REVIEW DISMISSED.